

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

SA.No. 287 of 1993(A)

AS.32/1991 of ADDL. SUB COURT, PALAKKAD
OS.604/1984 of ADDL.MUNSIFF COURT, PALAKKAD
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APPELLANT/APPELLANT/DEFENDANT

GOVINDAN, AGED 61 YEARS, S/O.VELLA
RESIDING AT THOTTUMULLIYIL, THENARI AMSOM
PALAKKAD TALUK, PALAKKAD (Dt) (DIED)

ADDL.APPELLANTS:-

- 2) N.MADURAKUTTY, W/O.V.GOVINDAN, THOTTUMULLIYIL
HOUSE, THENARI P.O. ELAPPULLY, PALAKKAD TALUK.
- 3) G.ANANTHAKRISHNAN, S/O.V.GOVINDAN, THOTTUMULLIYIL
HOUSE, THENARI P.O. ELAPPULLY, PALAKKAD TALUK.
- 4) G.RADHAKRISHNAN, S/O.GOVINDAN, THOTTUMULLIYIL
HOUSE, THENARI P.O. ELAPPULLY, PALAKKAD TALUK.
- 5) G.SASIKALA, D/O.GOVINDAN, PAZHANIYAR PALAYAM
KOZHINJAM PARA P.O. CHITTUR TALUK.
- 6) G.SAKHI, D/O.GOVINDAN, VALAVUPALAM,
PANNIPERUNTHALA (P.O.) CHITTUR TALUK.
- 7) G.SAVITHRI, D/O.GOVINDAN, THAZHATH HOUSE
KANNANUR P.O. PALAKKAD TALUK.

(ADDL.APPELLANTS 2 TO 7 ARE IMPEADED AS THE LEGAL
REPRESENTATIVES OF THE DECEASED SOLE APPELLANT AS
PER COMMON ORDER DATED 21/12/98 IN CMP 2843/98 AND
CMP 2844/98.)

BY ADV. SRI.P.VELAYUDHAN
SRI.T.M.CHANDRAN

RESPONDENT: RESPONDENT-PLAINTIFF

SATHI DEVI, AGED 47 YEARS
D/O.NALINI MANNADIAR, RESIDING
AT CHANDRIKA SADAN, PUTHUR AMSOM
PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITHAMBARESH

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 5/ 3 /2007 THE COURT ON 5/03/2007 DELIVERED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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S.A.No.287 OF 1993

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Dated this the 5th day of February, 2007

JUDGMENT

Defendant in O.S.604/84 on the file of Munsiff Court, Palghat was the appellant. On his death, his legal heirs were impleaded as additional appellants 2 to 7. Plaintiff in the suit is the respondent. Respondent filed the suit seeking a decree for permanent prohibitory injunction restraining defendant from entering upon the thadaya varamba or cutting and removing the trees and demolishing the varamba and also for damages of Rs.500/- contending that she sustained a loss of Rs.500/- as defendant cut the trees belonging to the plaintiff. It was contended that plaint schedule property belongs to the plaintiff under Ext.A1 partition deed and defendant has no manner of right or possession over the same. Defendant in the written statement contended that there is no teak tree standing on the varamba and the existing

teak trees form part of the paddy fields on the western side of the varamba belonging to defendant and plaintiff has no manner of right or possession over the same. It was contended that nuisance is being caused to the paddy field by the shades of branches of the trees and defendant lodged a complaint before executive Magistrate, Palghat and Revenue Inspector submitted a report and then the suit was filed without bonafides. It was also contended that defendant did not cut and remove any trees and therefore he is not liable to pay any damages. It was further contended that defendant has a right to cut and remove the branches of the trees overhanging his paddy field, causing nuisance and obstruction to cultivation in the paddy fields and therefore plaintiff is not entitled to the decree sought for.

2. Learned Munsiff framed necessary issues. On the evidence of Pws.1 and 2 and Ext.A1 and C1 and C2 learned Munsiff found that plaint schedule property is the property obtained by plaintiff

under Ext.A1 and the disputed teak trees stand in the thadaya varamba which form part of Plaint 'A' schedule property and defendant has no manner of right over the same. Learned Munsiff also found that if at all any nuisance is caused defendant has a right to abate the nuisance as provided by the law of torts but he is not entitled to trespass into the plaint schedule property. Learned Munsiff found that by cutting trees defendant caused a loss of Rs.161/- to the plaintiff. The suit was decreed restraining defendant from trespassing on the thadaya varamba or cutting and removing the trees and demolishing the varamba subject to any legitimate right available to him to abate any nuisance under the law of torts. Though defendant filed a counterclaim to abate the nuisance, he did not adduce any evidence. Learned Munsiff therefore dismissed the counter claim. Defendant challenged the decree and judgment before Sub Court, Palakkad in A.S.32/91. Learned Sub Judge on reappreciation of evidence found that there is no evidence to

prove that defendant committed any damages by cutting the trees and held that plaintiff is not entitled to the decree for damages granted by trial court. That portion of decree was set aside. But learned Munsiff found that defendant has no right to trespass into the property of plaintiff and though he alleged that a complaint was lodged before Executive First Class Magistrate and Revenue Inspector submitted a report, no material was produced and there was no evidence to prove that any nuisance is being caused. The appeal was dismissed confirming the decree for injunction granted by learned Munsiff. This appeal is filed challenging concurrent decree for injunction granted by the courts below.

3. The Second Appeal was admitted without formulating any substantial question of law. The substantial question of law suggested by appellant in the appeal memorandum was whether appellant is entitled to abate nuisance by cutting trees and branches of trees which caused shade and nuisance

to the adjoining land of plaintiff and whether appellant is entitled to get unfettered right to enjoy his land without interference.

4. Though it was contended by appellant before trial court that thadaya varamba does not belong to plaintiff and is not part of the property covered under Ext.A1, both the courts found that it forms part of the property covered under Ext.A1. That factual finding was not disputed. Though the trial court granted damages, first appellate court set aside that part of the decree and confirmed only the decree with regard to the injunction. The contention of appellant was that nuisance is caused by the trees standing in the thadaya varamba of property of plaintiff and defendant has a right to abate that nuisance. The decree of learned Munsiff shows that decree granted was subject to the right available to defendant under the law of torts to abate the nuisance. That finding has not been varied by learned Sub Judge. The defendant infact had filed a counter claim

along with written statement seeking a decree for abating nuisance. No evidence was adduced to prove the alleged nuisance. Though it was contended that proceedings were pending before executive Magistrate and report was also submitted by Revenue Inspector, nothing was produced either before trial court or first appellate court. There is absolutely no evidence to prove that trees standing in the varamba of plaint schedule property is causing any nuisance to defendant. In such circumstances, no substantial question of law is involved in the appeal.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006 **M. SASIDHARAN NAMBIAR, J.**

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W.P. (C)	NO.	OF 2006
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Dated this the day of 2007

JUDGMENT

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006